mands payment for the retention and use of the funds of another In a leading case on the subject the court said:

> "Call it interest, rent or hire, it becomes a debt at the time the party promised to pay it, and from that time he is using the money of the creditor or the landlord or the bailor, and ought to pay for it, unless he be allowed to take advantage of his own wrong in not making payment at the day." [5]

Does not interest bear the same relation to the principal loaned as the hire for a horse bears to the horse? Who would contend that a liveryman is not entitled to interest upon such hire if payment is not made when due? Is it oppressive or is it simply just to award it? Interest has been awarded upon defaulted installments of the hire of slaves.[6] And the decision seems irreproachable. How distinguish this from the hire of money?

Nor is it strictly accurate to say that simple interest by way of damages for non-payment of interest is compound interest. It is interest upon a debt past due. Only if the interest due as damages were itself made to bear interest could it be said that compound interest was awarded. It is safe to say that this would never be done.

The rule established by the better decisions and the sounder reasoning may be thus summed up: *Interest on the principal bears simple interest from the time it falls due until it is paid. But in no case can any part of the interest upon interest be made to bear interest.*[7]

The different view maintained in Virginia not only avoids harshness to the debtor but goes the length of oppressing the creditor.

J. E. R.

THE EXISTENCE OF A LEGAL REMEDY NO LONGER A BAR TO INJUNCTION OF ILLEGAL TAXES.—Prior to the year 1916, the law of Virginia, as fixed by a long line of decisions, was to the effect that a court of equity had concurrent jurisdiction with a court of law over the question of illegal tax assessments.[1] The fact that an adequate remedy at law was available to the tax-payer was held no bar to injunctive relief.[2] Naturally it became a frequent occurrence for the validity of an assessment to be tried in the equity courts in proceedings for an injunction. And this was true even where the plaintiff, had he paid the tax and gone into a court of law, might have had complete justice done him there.[3]

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[5] Bledsoe *v.* Nixon, 69 N. C. 89, 12 Am. Rep. 642 (1873).
[6] Hoyle *v.* Jones, 35 Ga. 40, 89 Am. Dec. 273 (1866).
[7] Anketel *v.* Converse, 17 Ohio St. 11, 91 Am. Dec. 115 (1866).
[1] Goddin *v.* Crump, 8 Leigh 120 (1837); City of Richmond *v.* R. & D. R. Co., 21 Gratt. 604 (1872); Schoolfield *v.* City of Lynchburg, 78 Va. 366 (1884); Wytheville *v.* Johnson, 108 Va. 589, 62 S. E. 328 (1908).
[2] Wytheville *v.* Johnson, *supra.*
[3] See Va. Code 1904, §§ 567-573, inclusive (V. C. 1919, § 2385, *et seq.*).

Now the original rule in most of the States had been that, save where special and peculiar equities existed, the collection of illegal taxes could never be enjoined.[4] The prompt and unembarrassed collection of the public revenue was considered vital to the welfare of the State.[5] Though this rule has been very generally modified, the federal court rule and the rule in most States requires the pursuance of a legal remedy where such remedy exists and is adequate.[6]

In 1916, the General Assembly adopted the following Act:

> "Be it enacted by the General Assembly of Virginia, That no suit for the purpose of restraining the assessment or collection of any tax, State or local, shall be maintained in any court in this Commonwealth, except when the party has no adequate remedy at law; provided this act shall not affect any pending suit." [7]

Thus was Virginia brought into line with the more general and, it is believed, the more desirable rule. The purpose of this note is simply to call attention to the fact that this act was not incorporated by the revisors into the Code of 1919 Nor has it found a place in any subsequent legislation. Its omission by the revisors effects its repeal.[8] It would seem, then, that the law stands once more as it stood before the passage of this act in 1916, and that today in Virginia an illegal assessment may be enjoined regardless of the question of existing legal remedies.

T. L. P.

EQUITY—PLEADING—EXCEPTION OR DEMURRER TO ANSWER.—The reports and law books in general are full of statements to the effect that, a demurrer to an answer in chancery is a pleading unknown to the chancery practice. But there have been few cases indeed in which the appellate courts have considered a demurrer to an answer fatal. The usual course is to condemn that particular form of procedure, treat the demurrer as setting the case for hearing on bill and answer, and proceed accordingly.

In the Federal courts the rule laid down in *Crouch* v. *Kerr* [1] that a demurrer does not lie to an answer, the court there refusing to consider the case on the merits but granting the plaintiff leave

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[4] McCoy *v.* Chilicothe, 3 Ohio 370, 17 Am. Dec. 607 (1828); Greene *v.* Mumford, 5 R. I. 472, 73 Am. Dec. 79 (1858). See Note, 69 Am. Dec. 198.

[5] 26 R. C. L. 460.

[6] Greene *v.* Mumford, *supra;* Chicago, etc., Ry. Co. *v.* Ft. Howard, 21 Wis. 44, 91 Am. Dec. 458 (1866); Dodge *v.* Osborn, 240 U. S. 118, 36 Sup. Ct. 275 (1915). See Note, 69 Am. Dec. 198.

[7] Acts 1916, p. 89. See Commonwealth *v.* Tredegar Co., 122 Va. 506 (1918); Commonwealth *v.* Carter, 126 Va. 469 (1920).

[8] Va. Code 1919, § 6567.

[1] 38 Fed. 549 (1889).